

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 620

Introduced by Senator Wright

February 22, 2013

An act to amend Sections 60290, ~~60315~~, 60335, 60336, and 60339 of, ~~and to repeal Sections 60291 and 60328.1 of,~~ the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Wright. Water replenishment districts.

(1) Existing law, the Water Replenishment District Act, provides for the formation of water replenishment districts and grants authority to a water replenishment district relating to the replenishment, protection, and preservation of groundwater supplies within that district. The act generally authorizes a water replenishment district to establish an annual reserve fund in an amount not to exceed \$10,000,000 commencing with the 2000–01 fiscal year, and thereafter, as that amount is adjusted annually. The act requires a minimum of 80% of the reserve fund to be expended for water purchases.

This bill would eliminate the requirement that ~~the reserve fund not exceed \$10,000,000 and related provisions. This bill instead would permit the district to establish an annual reserve fund maintained according to generally accepted accounting principles. This bill would authorize the board to transfer funds to a designated reserve, require the board to declare the exclusive purposes for which the moneys in a designated reserve fund may be spent and restrict those moneys only for the exclusive purposes for which the board established the designated reserve, as prescribed~~ *a minimum of 80% of the reserve fund be expended for water purchases.*

(2) The act requires the board of directors of a water replenishment district to declare whether funds are to be raised to purchase water for replenishment, as specified, and whether the funds are to be raised either by a water charge, a general assessment, a replenishment assessment, or a combination, as prescribed. The act requires the board to make certain determinations in connection with a decision to impose a water replenishment assessment and requires the water replenishment assessment to be fixed at a uniform rate per acre-foot of groundwater produced within the district. The act provides that if a producer knowingly fails to pay a replenishment assessment within 30 days of when due the producer is liable to the district for interest at the rate of 1% per month on the delinquent amount of the assessment.

This bill, instead, would provide that the producer is liable to the district for a penalty of 5% of the unpaid assessment as of the due date in addition to interest at the rate of 1% per month, or part of a month the assessment remains unpaid. This bill would prohibit the penalty from exceeding 25% of the total unpaid assessment.

(3) The act provides that any operator of a water-producing facility that knowingly fails to register his or her water-producing facility or knowingly fails to file a groundwater production statement, or any other reports or statements required, as specified, in addition to interest due, as prescribed, is liable to the district for a penalty of \$150.

This bill would provide that the operator is liable to the district for a penalty of \$1,000.

(4) The act authorizes the superior court of the county in which the major portion of the district lies to issue a temporary restraining order upon the filing by the district with the court of a verified petition or complaint setting forth that the defendant is the operator of a water-producing facility that has not been registered with the district or that the defendant is delinquent in the payment of a replenishment assessment, as specified.

This bill would require the court to direct that the party prevailing on any motion, as prescribed, be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 60290 of the Water Code is amended to read:

~~60290. (a) The district may establish an annual reserve fund that shall be maintained according to generally accepted accounting principles. The board may transfer funds to a designated reserve fund any time after the establishment of the fund.~~

~~(b) When the board establishes a designated reserve described in subdivision (a), the board shall declare the exclusive purposes for which the moneys in the designated reserve fund may be spent. The moneys in a designated reserve shall be spent only for the exclusive purposes for which the board established the designated reserve. If the board finds that the funds in a designated reserve are no longer required for the purpose for which it established the designated reserve, the board may discontinue the designated reserve or transfer any funds that are no longer required from the designated reserve to the district's general fund.~~

60290. The district may establish an annual reserve fund in an amount not to exceed ten million dollars (\$10,000,000) commencing with the 2000–01 fiscal year. The maximum allowable reserve fund may be adjusted annually commencing with 2001–02 fiscal year to reflect percentage increases or decreases in the blended cost of water from district supply sources.

~~SEC. 2. Section 60291 of the Water Code is repealed.~~

~~SEC. 3. Section 60315 of the Water Code is amended to read:~~

~~60315. Upon completing the hearing, but no later than the second Tuesday in May, the board shall, by resolution, find all of the following:~~

~~(a) The annual overdraft for the preceding water year.~~

~~(b) The estimated annual overdraft for the current water year.~~

~~(c) The estimated annual overdraft for the ensuing water year.~~

~~(d) The accumulated overdraft as of the last day of the preceding water year.~~

~~(e) The estimated accumulated overdraft as of the last day of the current water year.~~

~~(f) The total production of groundwater from the groundwater supplies within the district during the preceding water year.~~

~~(g) The estimated total production of groundwater from the groundwater supplies within the district for the current water year.~~

1 ~~(h) The estimated total production of groundwater from the~~
2 ~~groundwater supplies within the district for the ensuing water year.~~

3 ~~(i) The changes during the preceding water year in the pressure~~
4 ~~levels or piezometric heights of the groundwater contained within~~
5 ~~pressure-level areas of the district, and the effects thereof upon~~
6 ~~the groundwater supplies within the district.~~

7 ~~(j) The estimated changes during the current water year in the~~
8 ~~pressure levels or piezometric heights of the groundwater contained~~
9 ~~within pressure-level areas of the district, and the estimated effects~~
10 ~~thereof upon the groundwater supplies within the district.~~

11 ~~(k) The quantity of water that should be purchased for the~~
12 ~~replenishment of the groundwater supplies of the district during~~
13 ~~the ensuing water year.~~

14 ~~(l) The source and estimated cost of water available for the~~
15 ~~replenishment.~~

16 ~~(m) The estimated costs of replenishing the groundwater supplies~~
17 ~~with the water so purchased.~~

18 ~~(n) The estimated costs of purchasing, in water years succeeding~~
19 ~~the ensuing water year, that portion of the quantity of water which~~
20 ~~should be purchased for the replenishment of the groundwater~~
21 ~~supplies of the district during the ensuing water year, but which~~
22 ~~is estimated to be unavailable for purchase during the ensuing~~
23 ~~water year; estimated costs shall be based on the estimated price~~
24 ~~of water for replenishment purposes during the ensuing water year.~~

25 ~~(o) The estimated rate of the replenishment assessment required~~
26 ~~to be levied upon the production of groundwater from the~~
27 ~~groundwater supplies within the district during the ensuing fiscal~~
28 ~~year for the purposes of accomplishing the replenishment and~~
29 ~~providing a reserve fund to purchase in future years, when~~
30 ~~available, that portion of the quantity of water which should be~~
31 ~~purchased for the replenishment of the groundwater supplies of~~
32 ~~the district during the ensuing water year, but which is estimated~~
33 ~~to be unavailable for purchase during that ensuing water year.~~

34 ~~(p) Whether any contaminants should be removed from~~
35 ~~groundwater supplies during the ensuing fiscal year, and whether~~
36 ~~any other actions under Section 60224 should be undertaken during~~
37 ~~the ensuing fiscal year, the estimated costs thereof, and the~~
38 ~~estimated additional rate of replenishment assessment required to~~
39 ~~be levied upon the production of groundwater from the~~

1 groundwater supplies within the district during the ensuing fiscal
2 year for those purposes.

3 ~~(q) Whether any program for removal of contaminants or other~~
4 ~~actions under Section 60224 should be a multiyear program or is~~
5 ~~a continuation of a previously authorized multiyear program.~~

6 ~~SEC. 4. Section 60328.1 of the Water Code is repealed.~~

7 ~~SEC. 5.~~

8 *SEC. 2.* Section 60335 of the Water Code is amended to read:

9 60335. If any producer shall knowingly fail to pay a
10 replenishment assessment within 30 days of when due, the producer
11 shall become liable to the district for a penalty of 5 percent of the
12 unpaid assessment as of the due date in addition to interest at the
13 rate of 1 percent per month, or part of a month that the assessment
14 remains unpaid, on the delinquent amount of the assessment. The
15 penalty shall not exceed 25 percent of the total unpaid assessment.

16 ~~SEC. 6.~~

17 *SEC. 3.* Section 60336 of the Water Code is amended to read:

18 60336. Should any operator of a water-producing facility
19 knowingly fail to register his or her water-producing facility or
20 knowingly fail to file the groundwater production statement, or
21 knowingly fail to file and furnish any other reports or statements
22 required by resolution of the board adopted pursuant to Section
23 60326, the operator shall, in addition to interest as provided in
24 Section 60335, become liable to the district for a penalty of one
25 thousand dollars (\$1,000).

26 ~~SEC. 7.~~

27 *SEC. 4.* Section 60339 of the Water Code is amended to read:

28 60339. (a) The superior court of the county in which the major
29 portion of the district lies may issue a temporary restraining order
30 upon the filing by the district with the court of a verified petition
31 or complaint setting forth that the person named therein as
32 defendant is the operator of a water-producing facility which has
33 not been registered with the district or that the defendant is
34 delinquent in the payment of a replenishment assessment. The
35 temporary restraining order shall be returnable to the court on or
36 before ~~ten (10)~~ 10 days after its issuance.

37 (b) The court may issue and grant an injunction restraining and
38 prohibiting the named defendant from the operation of any
39 water-producing facility when it is established by the
40 preponderance of the evidence at a hearing that the defendant has

1 failed to register the water-producing facility with the district or
2 that the defendant is delinquent in the payment of a replenishment
3 assessment. The court may provide that the injunction so made
4 and issued shall be stayed for a period not to exceed 10 days to
5 permit the defendant to register the water-producing facility or to
6 pay the delinquent replenishment assessment.

7 (c) Service of process shall be made by posting a copy of the
8 summons and complaint upon the water-producing facility or the
9 parcel of land upon which the water-producing facility is located
10 and by personal service of summons and complaint upon the named
11 defendant.

12 (d) The right to proceed for injunctive relief as provided in this
13 section shall be in addition to any other right which may be
14 provided elsewhere in this act or which may be otherwise allowed
15 by law. The procedure provided in Chapter 3 (commencing with
16 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure
17 regarding injunctions shall be followed except insofar as it may
18 be otherwise provided in this section.

19 (e) The court shall direct that the party prevailing on any motion
20 under this section be awarded the reasonable attorney's fees and
21 costs of making or opposing the motion unless the court finds that
22 the other party acted with substantial justification or that other
23 circumstances make the imposition of attorney's fees and costs
24 unjust.